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11 *Proposed Counsel to the Official*
12 *Committee of Unsecured Creditors of*
Easterday Ranches, Inc.

13 UNITED STATES BANKRUPTCY COURT
14 EASTERN DISTRICT OF WASHINGTON

15 In re:
16 EASTERDAY RANCHES, INC., *et al.*,
17 Debtors.¹

Chapter 11

Lead Case No. 21-00141-11
Jointly Administered

**REPLY IN SUPPORT OF MOTION FOR
AN ORDER DIRECTING RULE 2004
EXAMINATIONS OF THE DEBTORS
AND NON-DEBTOR PARTIES**

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21 ¹ The Debtors, along with their case numbers, are as follows: Easterday Ranches, Inc.
(21-00141) and Easterday Farms, a Washington general partnership (21-00176).

1 The Official Committee of Unsecured Creditors of Easterday Ranches, Inc.
2 (the “Ranches Committee”)¹ respectfully submits this reply (“Reply”) and the
3 concurrently filed Declaration of Christopher B. Durbin (the “Durbin Decl.”) in
4 support of its motion [Dkt. No. 644] (the “Motion”) for an order directing a Rule
5 2004 examination of certain Non-Debtor Parties identified in the Motion.²

6 This Reply addresses objections (collectively, the “Objections”) filed by
7 (i) Weyns Farms, LLC (“Weyns Farms”) [Docket No. 748]; (ii) Karen Easterday
8 [Dkt. No. 751]; (iii) Easterday Dairy, LLC (“Dairy”) [Dkt. No. 753]; (iv) Tyson
9 Fresh Meats, Inc. (“Tyson”) [Dkt. No. 754]; (v) 3E Properties, LLC (“3E”), EPO,
10 LLC (“EPO”) and Easterday Farms Produce, Co. (“Produce”) [Dkt. No. 755];
11 (vi) Segale Properties LLC (“Segale”) [Dkt. No. 759]; (vii) Cody and Debby
12 Easterday [Dkt. No. 760]; and (viii) English Hay Company (“English Hay”) [Dkt.
13 No. 762] (collectively, the “Objecting Parties”).

14 **PRELIMINARY STATEMENT**

15 1. The Objections do not undermine the showing of good cause in the
16 Ranches Committee’s Motion, which has only grown stronger since the Motion was
17 filed. Because of the Ranches Committee’s obligation to fully investigate the
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19 ¹ Capitalized terms not otherwise defined have the meanings set forth in the Motion.

20 ² As discussed below, the Ranches Committee withdraws the Motion without
21 prejudice solely with respect to Easterday Ranches, Inc. (“Ranches”) and Easterday
Farms (“Farms”), debtors and debtors in possession (the “Debtors”) in the above-
captioned chapter 11 cases, as well as CHS Hedging, LLC (“CHS”).

1 Debtors' assets and affairs, and very little time left to complete that investigation, the
2 formal discovery process provided by Rule 2004 grows increasingly necessary with
3 each passing day.

4 2. Several weeks after the Ranches Committee reached out to begin
5 informal meet-and-confer discussions, the Non-Debtor Parties who object most
6 strenuously to the Motion still remain the slowest to engage and have produced few,
7 if any, documents. Those Non-Debtor Parties include, notably, the individuals and
8 entities most closely affiliated with the Debtors: the Easterday Family³ and their
9 related entities such as Dairy and Produce.

10 3. With the Debtors' sale process and potential plan filing looming, it is
11 those Non-Debtor Parties from whom the Ranches Committee most needs
12 cooperation and prompt production of documents to complete its investigation. In
13 other words, the individuals and entities that are most closely intertwined with the
14 Debtors—and thus most relevant to the Ranches Committee's investigation—are the
15 least willing to produce documents that would allow for a fully informed assessment
16 of allocation issues, potential claims, proposed releases, and the like.

17 4. Since the filing of the Motion, the Ranches Committee has made
18 significant progress in obtaining discovery from certain targets of its Rule 2004
19 examination. Specifically, the Ranches Committee has had numerous conversations
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³ The “Easterday Family” includes Karen, Cody, and Debby Easterday.

1 with the Debtors and certain Non-Debtor Parties—including counsel to the Easterday
2 Family, Segale, Tyson, CHS, and Weyns Farms—to address various concerns raised
3 by such parties with respect to the scope and breadth of the requests set forth in the
4 Motion. To that end, the Ranches Committee has significantly narrowed the
5 discovery requests set forth in the Motion with respect to the Debtors and Non-Debtor
6 Parties by, among other things, identifying the specific requests applicable to each
7 target, narrowing the time periods of the requests, and clarifying the intent and
8 rationale behind such requests. *See* Durbin Decl., ¶¶ 9-10, 12, 14-18, 34-35, 38, 39.
9 Any confusion regarding which Requests are directed to which Non-Debtor Parties
10 is the product of those parties' failure to engage meaningfully (or at all) in the meet-
11 and-confer process.⁴

12 5. Indeed, the Ranches Committee has entered into stipulations regarding
13 discovery and document production with certain parties—and withdrawn the Motion
14 without prejudice as to those parties—that have engaged in meaningful good-faith
15 meet-and-confer discussions and produced (or committed to producing) responsive
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17 ⁴ During the Ranches Committee's discussions with counsel to Karen Easterday and
18 Cody and Debby Easterday, such counsel have represented that they speak for the
19 unrepresented Easterday family members (including Kimberly English, Scott
20 English, Jody Easterday, Andrew Willis, Cully Easterday, and Shani Easterday) and
21 are coordinating with counsel to the family's related entities (Dairy, Produce, English
Hay, EPO, 3E, and G2E2, LLC). *See* Durbin Decl., ¶ 15. It remains unclear to the
Ranches Committee the extent to which those Non-Debtor Parties are willing to
produce responsive documents, as counsel for those entities have never directly
engaged with the Ranches Committee. *See id.*, ¶ 21.

1 documents: the Debtors [*see* Dkt. No. 763] and CHS [*see* Dkt. No. 766] (collectively,
2 the “Stipulated Parties”).

3 6. While the Ranches Committee has made meaningful progress to date, a
4 formal discovery process with respect to the remaining Non-Debtor Parties remains
5 necessary in light of (i) the exigency imposed by the Debtors’ sale timeline, which
6 restricts the time available to the Ranches Committee to complete its investigation;
7 and (ii) the number of Non-Debtor Parties that may have information relevant to the
8 Ranches Committee’s investigation. The Ranches Committee understands that the
9 Debtors will seek to file a plan by July 1, 2021 and are developing an allocation
10 protocol with respect to proceeds from the sale of properties owned by the Debtors
11 and certain Non-Debtor Parties. Without a formal discovery process, the Ranches
12 Committee will be left to rely entirely on the voluntary and timely cooperation of the
13 Non-Debtor Parties—without which, the Ranches Committee will be unable to make
14 informed decisions with respect to, among other things, the allocation of sale
15 proceeds and the propriety of releases included in any proposed plan.

16 7. While certain of the Non-Debtor Parties raised Objections with respect
17 to the *timing* of the Motion—arguing that Ranches Committee should have waited to
18 file the Motion until it has reviewed all the documents recently received through the
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1 Debtors or otherwise after the sale process⁵—the Ranches Committee is mindful of
2 the court’s comments regarding the possibility of sale proceeds languishing in escrow
3 while the various parties-in-interest decide allocation.

4 8. The Objections largely take issue with the *form* of the examination
5 notice rather than the Motion itself, with many Objecting Parties themselves
6 acknowledging the Ranches Committee’s need for information.⁶ The Ranches
7 Committee only seeks to equip itself with the guardrails of a formal discovery
8 process, so the objections to the form of discovery requests are premature—as at least
9 one Objecting Party has conceded.⁷ Even so, the Ranches Committee is aware of the
10 potential cost of discovery and burden to the producing parties and will continue to
11 be judicious in its discovery requests. If there are disagreements over the scope or
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13 ⁵ See, e.g., Cody and Debby Easterday Objection at 6 (“The Court should not enter
14 an order for the Easterdays’ examination or production of documents pursuant to
15 Rule 2004 until the Ranches Committee has exhausted its review of documents and
16 evidence provided by the Debtors.”); Tyson Objection at 3 (“If—after the debtors
17 have completed their liquidating sales and after the Ranches Committee has digested
18 the informal productions—the Ranches Committee still believes formal discovery is
19 necessary, the Ranches Committee can file an amended and more focused motion
20 under Rule 2004.”).

21 ⁶ See, e.g., Dairy Objection at 1–2 (“In short, Dairy has no objection to the Court’s
entry of an order authorizing Ranches Committee to conduct discovery pursuant to
Fed. R. Bankr. P. 2004.”); Tyson Objection at 1 (“[Tyson] recognizes the Ranches
Committee is entitled to information necessary to determine whether claims
beneficial to the estate exist and whether to pursue such claims . . .”).

⁷ See Dairy Objection, at 5 (“Disputes, of the kind that are being heard at this point,
are premature and should be heard by the [c]ourt after the order has been approved,
and either objections to the subpoenas and subpoena duces tecum have been served
or a motion for a protection order has been filed by a respondent.”).

1 breadth of the discovery requests *after* the Ranches Committee serves its requests,
2 the Non-Debtor Parties are entitled to lodge their objections at that time.

3 ARGUMENT

4 **A. The Ranches Committee Has Established Good Cause for the Motion.**

5 9. Rule 2004 provides, in relevant part, that the bankruptcy court may
6 authorize the examination of any entity relating “to the acts, conduct, or property or
7 to the liabilities and financial condition of the debtor, or to any matter which may
8 affect the administration of the debtor’s estate.” Fed. R. Bankr. P. 2004(b). The
9 party seeking Rule 2004 discovery has the burden to show good cause for the
10 examination it seeks, and relief lies within the sound discretion of the bankruptcy
11 court. *See, e.g., Picard v. Marshall (In re Bernard L. Madoff Inv. Secs. LLC)*, Adv.
12 Pro. No. 08-01789, 2014 WL 5486279, at *2 (Bankr. S.D.N.Y. Oct. 30, 2014).

13 10. In addition to relevance, good cause may be shown if the proposed
14 examination “is necessary to establish the claim of the party seeking the examination,
15 or . . . denial of such request would cause the examiner undue hardship or injustice[.]”
16 *See In re Dinubilo*, 177 B.R. 932, 943 (E.D. Cal. 1993). Legitimate goals of Rule
17 2004 examinations include “discovering assets, examining transactions, and
18 determining whether wrongdoing has occurred.” *In re Millenium Lab Holdings II,*
19 *LLC*, 562 B.R. 614, 626 (Bankr. D. Del. 2016). Given the broad purpose and effect
20 of Rule 2004, courts routinely permit the examination of third parties who can be
21 shown to have had dealings with the debtor. *See In re Correra*, 589 B.R. 76, 108

1 (Bankr. N.D. Tex. 2018) (“Third parties are subject to examination pursuant to Rule
2 2004 if they have knowledge of the debtor’s affairs.”).

3 11. As a fiduciary for all unsecured creditors, the Ranches Committee
4 “execute[s] an oversight function” and “may investigate the debtor’s assets and
5 affairs.” *In re Refco Inc.*, 336 B.R. 187, 195 (Bankr. S.D.N.Y. 2006). In this role,
6 the Ranches Committee is granted broad statutory powers to “investigate the acts,
7 conduct, assets, liabilities and financial condition of the debtor . . . and any other
8 matter relevant to the case or to the formulation of a plan.” 11 U.S.C. § 1103(c)(2).

9 12. The Ranches Committee’s objectives fit squarely within the purposes of
10 Rule 2004. The Ranches Committee is investigating not just Cody Easterday’s fraud,
11 but also (and perhaps more importantly) the underlying circumstances and
12 implications of the fraud amongst a complex web of closely related family owned
13 entities. The Ranches Committee is already efficiently leveraging the investigation
14 by the Department of Justice (“DOJ”) and does not intend to ask for duplicative
15 information from the Non-Debtor Parties. In fact, for many of the Non-Debtor
16 Parties, the Ranches Committee has requested an initial production only of materials
17 previously produced to the DOJ. *See* Durbin Decl., ¶¶ 38, 40.

18 13. Notwithstanding the DOJ’s investigation, the Ranches Committee is
19 charged with an independent fiduciary duty to investigate the Debtors, including
20 causes of action and claims that the Debtors have (and may seek to release), as well
21 as potential wrongdoing. *See also In re Valley Forge Plaza Assocs.*, 109 B.R. 669,

1 674 (Bankr. E.D. Pa. 1990) (“[T]he breadth of scope of a [Rule 2004] examination
2 derives from the particular purpose . . . to discover and investigate how to bring to
3 light possession of assets of the debtor which might be intentionally concealed or
4 overlooked in ignorance or haste.”).

5 14. To that end, the Ranches Committee is investigating potential claims
6 arising from any transfers from the Debtors’ estates to Non-Debtor Parties,
7 particularly those whose assets are being sold via the Debtors’ contemplated sale
8 process. In addition, the Ranches Committee is investigating the relationship
9 between Tyson, on the one hand, and the Debtors and the Easterday Family, on the
10 other.⁸ The results of this investigation will inform the Ranches Committee as to the
11 propriety of any plan releases and proper allocation of sale proceeds.

12 15. The unique nature of these chapter 11 cases and circumstances
13 surrounding the bankruptcy filing merits further emphasis—particularly the close
14 familial and financial ties of certain Non-Debtor Parties to the Debtors. The
15 Objections filed by the Easterday Family assert that there is no evidentiary basis to
16 connect the Easterday Family and other Non-Debtor Parties to the Debtors or the
17 bankruptcy cases.⁹ But the Objections notably omit that Cody Easterday, Debby
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19 ⁸ Including, for example, what the Ranches Committee is informed and believes to
20 have been a prepetition transfer of approximately 45,000 head of cattle to Tyson,
21 known as “Cattle 3.” *See* Statement of Financial Affairs of Easterday Ranches, Inc.
[Dkt. No. 542], at 5, Item 13.

⁹ *See* Karen Easterday Objection at 10.

1 Easterday, and Karen Easterday held 100% of the ownership interests in the Debtors.
2 The Objections also ignore a history of the Debtors' dealings with certain of the Non-
3 Debtor Parties, including loans to, and other transactions with, certain Easterday
4 family entities such as Produce and Weyns Farms. Those individuals are thus well
5 positioned to provide information regarding the Debtors' prepetition conduct prior to
6 the assumption of control by the independent directors.

7 16. The Cooperation Agreement further illustrates the overlapping interests
8 among the Easterday Family and the Debtors. Even a cursory review of the Debtors'
9 schedules and statements implicates certain other Non-Debtor Parties that give rise
10 to further questions—for example, payments from Ranches within 90 days of the
11 Petition Date to English Hay and Weyns Farms.¹⁰ Moreover, the Ranches Committee
12 is still investigating the circumstances of the North Lot sale on the eve of the
13 bankruptcy filing. [See Dkt. Nos. 79, 80, 82.]

14 17. To be clear, the Debtors have recently provided a large volume of
15 documents to the Ranches Committee, including documents provided as part of the
16 DOJ investigation. Tyson and Segale also recently provided materials those parties
17 previously produced to the DOJ. The Ranches Committee's review of those
18 materials is ongoing, but undoubtably it will need documents not within the Debtors'

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20 ¹⁰ See Statement of Financial Affairs of Easterday Ranches, Inc. [Dkt. No. 542].
21 Other issues meriting further investigation include, for example, a \$2.2 Million Note
Receivable from Easterday Farms Ltd. (Canada) identified on the Debtors' Schedules
[see Dkt. No. 541, at 17, Line 71].

1 control and going beyond the materials produced to the DOJ—particularly those held
2 by the Easterday Family. If such documents do not exist or would be unduly
3 burdensome to produce, the targets served with discovery requests can so respond.

4 18. If the Ranches Committee had already obtained all the documents it
5 needs to complete its investigation via informal discovery, it would not have filed the
6 Motion. And while some (but not all) of the Non-Debtor Parties from which it seeks
7 formal discovery have engaged meaningfully in meet-and-confer discussions, they
8 did so only after the Ranches Committee filed the Motion. The Ranches Committee
9 simply does not have the luxury of unlimited time to rely on the Non-Debtor Parties’
10 eventual production of responsive documents. Despite the Non-Debtor Parties’
11 assertions that informal discovery works just fine, the fact remains that certain of the
12 Non-Debtor Parties—primarily the Easterday family and related entities—have
13 engaged belatedly and haltingly (if at all) in informal discussions with the Ranches
14 Committee. *See* Durbin Decl., ¶¶ 14–21.

15 19. Simply put, the Ranches Committee has shown good cause for a formal
16 coercive discovery process to ensure that the remaining Non-Debtor Parties fully
17 engage with the Ranches Committee, timely produce responsive documents, and do
18 not run the clock out on the Ranches Committee’s investigation. The discovery
19 process will thus be aided by the formality of a Rule 2004 investigation and—if the
20 Non-Debtor Parties are as willing to work consensually with the Ranches Committee
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1 as they say in their Objections—the subsequent meet-and-confer process should limit
2 any need for the court’s intervention.

3 20. Particularly given the exigency created by the short time frame imposed
4 by the Debtors’ sale process and potential plan filing by July 1, 2021, the court should
5 grant the Motion and authorize an examination of the Non-Debtor Parties pursuant
6 to Rule 2004.

7 **B. Objections to the Scope and Breadth of the Discovery Requests Do Not**
8 **Undermine the Showing of Good Cause to Grant the Motion.**

9 21. The Objections universally raise concerns that should and will be
10 addressed during the parties’ meet-and-confer process. These arguments, including
11 the cost and burden of responding to discovery¹¹ and the proportionality or relevance
12 of the requests,¹² are not properly directed to the court’s adjudication of the Motion.

13 22. *First*, bankruptcy courts have noted that objections based on the breadth
14 or scope of the discovery requests are not a proper basis to deny a Rule 2004 motion.
15 *See In re Millennium Lab Holdings II*, 562 B.R. 614, 626 (Bankr. D. Del. 2016)
16 (granting Rule 2004 motion and deferring ruling on objections to “breadth of the
17 specific requests until the parties meet and confer to see whether [they] can resolve
18 their differences.”). Granting the Motion allows the Ranches Committee only to
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21 ¹¹ *See, e.g.*, Karen Easterday Objection at 9.

¹² *See, e.g.*, Tyson Objection at 3–4.

1 formally request discovery from the Non-Debtor Parties—after which the parties will
2 endeavor to resolve any disputes via meet-and-confer discussions.

3 23. *Second*, the Objections exaggerate and misrepresent the Ranches
4 Committee’s intentions. It simply is not true that the Ranches Committee will seek
5 thousands of duplicative and frivolous discovery requests from everyone and their
6 cousins¹³—and the Objecting Parties know it. The Ranches Committee has made it
7 abundantly clear to the Easterday Family that its primary goal is to understand exactly
8 which of the Non-Debtor Parties would be the appropriate target for the information
9 requested—which would require, in the first instance, discussions with such Non-
10 Debtor Parties. *See* Durbin Decl., ¶ 16. That information has been slow in coming,
11 but the Ranches Committee intends only to serve discovery requests that are
12 necessary and relevant to its investigation. *Id.*, ¶ 20.

13 24. Indeed, in its informal discussions with counsel to the Easterday Family
14 (and all other Non-Debtor Parties) to date, the Ranches Committee has already
15 significantly narrowed the requests specified in the form of notice attached to the
16 Motion. *Id.*, ¶ 17. For instance, the Ranches Committee has agreed to shorten the
17 time frame of the discovery requests to the Easterday Family by five years, from 2011
18 to 2016, which the Ranches Committee understands to be when the Cody Easterday
19 fraud began. *Id.*, ¶ 18. Similarly, the Ranches Committee has explained to certain
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¹³ *See* Karen Easterday Objection, 12–13.

1 parties that it would be amenable to utilizing search terms to minimize the burden of
2 producing electronically stored information, such as emails. *See id.*, ¶ 12.

3 25. The Ranches Committee is mindful of cost considerations and potential
4 burdens and will continue to work in good faith with the Non-Debtor Parties to come
5 to consensual agreements, to the extent possible. The formal discovery process is
6 intended only to establish guardrails if consensus is not possible, particularly in light
7 of the number of Non-Debtor Parties who may have information relevant to the
8 Ranches Committee's investigation. To that end, the Ranches Committee intends to
9 serve discovery requests only for documents it has not already received from the
10 Debtors or other the Non-Debtor Parties.

11 **C. The Ranches Committee Has Complied with Local Rule 2004-1.**

12 26. The Objecting Parties also request denial of the Motion on the basis that
13 the Ranches Committee did not meet and confer with them prior to the filing of the
14 Motion, as required by Local Rule 2004-1.¹⁴ *See* Karen Easterday Objection at 6;
15 Dairy Objection at 2; Cody and Debby Easterday Objection at 6. Rule 2004-1
16 provides, in relevant part, that the moving party for an order to examine any person
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19 ¹⁴ One objection contends that Local Rule 7026-1 requires “parties seeking
20 compulsion of discovery to attempt to confer prior to filing motions,” *see* Karen
21 Easterday Objection at 1, but the Ranches Committee does not believe that rule is
applicable to its Motion—which seeks to *serve* discovery requests, *not* a “to compel
disclosure, discovery or for a protective order[.]” Local Rule 7026-1(b).

1 shall certify that such party has “coordinated the time and place of the examination
2 with the person to be examined or specify why it is impossible to do so.”

3 27. The Ranches Committee has substantially complied with Local Rule
4 2004-1, as its explained in the certification in its Motion: “[a]t such time as the
5 Ranches Committee seeks such examinations, counsel will coordinate the time and
6 place with the Debtor(s) and/or Non-Debtor Party/ies from whom such examinations
7 is/are sought.” See Motion at 10 (emphasis added). In other words, the Ranches
8 Committee did not attempt to “coordinate the time and place” of Rule 2004
9 examinations to avoid wasting the parties’ time scheduling examinations that were
10 not yet (and may never be) necessary. To conserve all parties’ time and resources,
11 the Ranches Committee elected not to seek any examinations before reviewing the
12 documents produced and deciding whether, and from whom, sworn testimony is
13 needed. As noted in the Motion, *if* the Ranches Committee seeks examinations of
14 the Non-Debtor Parties, it will do so “at a mutually convenient date, time, place, and
15 manner” See Motion at 6, ¶ 8.

16 28. In any event, the Ranches Committee did provide notice to the Non-
17 Debtor Parties of its intention to file the Motion. On April 22, 2021, the Ranches
18 Committee disclosed its intention to file the Motion to serve discovery demands on
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1 the Debtors and certain third-parties.¹⁵ And since filing the Motion, the Ranches
2 Committee has reached out to known counsel for all Non-Debtor Parties in an effort
3 to reach consensual resolutions. *See* Durbin Decl., ¶¶ 4–7, 12, 14, 22, 24, 27, 32, 37,
4 39.

5 29. In short, the Ranches Committee has acted in good faith to engage
6 efficiently with numerous parties—including by agreeing to a two-week continuation
7 of the hearing [*see* Dkt. No. 691] and multiple extensions of the Non-Debtor Parties’
8 deadline to respond to the Motion *see* Durbin Decl., ¶ 7—while working under an
9 expedited schedule to complete its investigation. *Cf. In re RS Legacy Corp.*, No. 15-
10 10197 (BLS) (Bankr. D. Del. Mar. 11, 2015) [Dkt. No. 1088] [Hearing Transcript]
11 (discussing parties’ meet-and-confer efforts before seeking court intervention). As a
12 result, the Non-Debtor Parties have not been prejudiced in any way.

13 **D. Any Request for a Protective Order is Unnecessary and Premature.**

14 30. Certain of the Objecting Parties have argued that they are entitled to a
15 protective order to limit the scope of discovery.¹⁶ The Ranches Committee does not
16 object in theory to protective orders and has already agreed to stipulated protective
17 orders with multiple parties. *See* Durbin Decl., ¶¶ 11, 13. But arguing for such relief
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20 ¹⁵ *See* Limited Objection and Reservation of Rights of the Ranches Committee to
21 Debtors’ Cooperation Agreement Motion and Bidding Procedures Motion [Dkt. No.
614], at 3, n.5.

¹⁶ *See* Karen Easterday Objection at 5; Dairy Objection at 21–22.

1 is unnecessary and premature at this stage, given that the Motion will only authorize
2 the Ranches Committee to serve the discovery requests.

3 **CONCLUSION**

4 For the foregoing reasons, the Ranches Committee respectfully requests that
5 the court grant the Motion.

6 Dated: June 1, 2021

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